

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELODY ANN MILLER
Claimant

VS.

VIA CHRISTI REGIONAL MEDICAL CTR.
Respondent

AND

SECURITY INS. CO. OF HARTFORD
Insurance Carrier

Docket No. 253,673

ORDER

Respondent requests review of a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on January 2, 2002.

ISSUES

The authorized medical provider, Philip R. Mills, M.D., determined claimant had reached maximum medical improvement for her back and further concluded he was unable to state claimant's left knee complaints were related to an aggravation suffered during her functional capacity evaluation. Accordingly, respondent terminated temporary total disability and medical benefits.

Claimant requested a preliminary hearing to reinstate temporary total disability benefits and to reinstate treatment for claimant's back as well as to provide treatment for claimant's left knee. After the preliminary hearing, the Administrative Law Judge designated C. Reiff Brown, M.D., to conduct an independent medical examination of claimant. The Administrative Law Judge took claimant's request for temporary total disability and medical benefits under advisement pending receipt of the independent medical evaluation report.

Upon receipt of Dr. Brown's report a continuation of the preliminary hearing was conducted on July 19, 2001. The sole witness at this hearing was Susan Rockley, the physical therapist who performed the functional capacities evaluation on claimant. On

January 2, 2002, the Administrative Law Judge denied any further treatment for claimant's back but ordered treatment for claimant's left knee injury.

The sole issue raised on review by the respondent is whether the claimant's left knee injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the conclusion of claimant's treatment for a work-related back injury, she was referred by her treating physician for a functional capacities evaluation. On November 9, 2000, Susan Rockley, a physical therapist for respondent, performed a functional capacities evaluation on claimant.

Claimant testified that while she was lifting during the functional capacities evaluation her left leg went numb. She further testified she had to repetitively squat in order to lift the weights and place them at different levels. Lastly, she noted when she went to her regular physical therapist an hour after the evaluation was terminated, she advised him that her knee was bothering her.

Claimant admitted she had experienced pain and swelling in her left leg in November when she changed her residence and moved. However, claimant noted that although she had some leg pain after her move she did not have knee pain.

Claimant advised her physical therapist that her ability to stand and walk during the week of December 15th was limited to two minutes because of left knee pain. On December 18, 2000, Dr. Mills saw the claimant and noted that she felt her knee was aggravated during the functional capacities evaluation. Dr. Mills indicated he was going to arrange for physical therapy for the knee.

A private investigator, Dale Jackson, performed surveillance of claimant after she left her appointment with Dr. Mills. Mr. Jackson testified he observed her shopping at Wal-Mart for about 33 minutes and then shopping at Dillons for about 37 minutes. When questioned about the videotape of her activities claimant testified she sat down periodically while shopping. Mr. Jackson testified he observed claimant while she was in both stores and claimant never sat down while shopping at either store.

On January 10, 2001, Dr. Mills reviewed the surveillance videotape taken on November 13, 2000, November 21, 2000, and December 18, 2000, and noted that, at times, claimant favored her left knee and other times she did not. The doctor noted:

In terms of causation of the knee complaints, I am unable to state within a reasonable degree of medical probability or certainty that this is related to her work case, either directly or indirectly. She feels that it was aggravated by the Functional Capacity Evaluation, however, I feel that while this is certainly possible, it is much more likely that it is related to her weight and body habitus coupled with her age and is multifactorial.

Claimant's attorney referred her to Pedro A. Murati, M.D., for evaluation. Claimant gave the doctor a history of injuring her left knee while trying to lift 25 pounds during her functional capacity evaluation. Dr. Murati diagnosed left knee pain with meniscus damage as a direct result from the claimant's work-related injury.

After the initial preliminary hearing held on March 26, 2001, an independent medical examination of claimant was performed by Dr. Brown. Claimant gave the doctor a history of injury to her left knee while lifting 25 pounds during her functional capacity evaluation. Claimant advised the doctor that she was repeatedly lifting which caused back pain and numbness in the left leg with some knee pain. Approximately two hours after the functional capacities evaluation, the claimant had an onset of left knee pain which has been persistent. Dr. Brown addressed the left knee complaints in the following fashion:

The history that she gives relative to onset of these symptoms (in the course of repeated flexing of the knee, placing it under load of her body weight as well as the box at or below floor level and extension underload [sic] as frequently as she relates the occurrence), in my opinion, could have resulted in a tear of the medial meniscus.

Susan Rockley, the physical therapist who performed the functional capacities evaluation, testified claimant did not report knee discomfort during or after the evaluation. She further noted claimant did not require a flexed knee position greater than 90 degrees in order to perform the lifting. It was further noted the weights were 13 inches off the floor. Lastly, she noted claimant performed 36 lifts over a period of 25 minutes before the evaluation was discontinued because of claimant's complaints of pain in her back with numbness and tingling in her buttock and lower thigh.

At the conclusion of the second preliminary hearing on July 19, 2001, respondent argued that Dr. Mills' opinion that the left knee was not injured or aggravated during the functional capacities evaluation should be adopted. Respondent further argued that because claimant gave Dr. Brown an inaccurate description of her physical activities during the functional capacities evaluation the opinion of Dr. Brown is therefore flawed and should be disregarded.

Although there is some dispute regarding the number of times claimant was required to repetitively lift during the functional capacities evaluation, it is undisputed claimant was required to lift items from approximately 13 inches off the floor. It is further undisputed

claimant was required to flex her knees to perform this task. The degree of knee flexion necessary to perform the lifting tasks is disputed but the Administrative Law Judge had the benefit of observing the physical therapist physically demonstrate how the lifting task was performed.

The claimant reported to Drs. Mills, Murati and Brown that she injured her left knee during the lifting portion of her functional capacities evaluation. After viewing the videotape of claimant's activities, Dr. Mills noted claimant did at times favor her left knee. The independent medical examiner, Dr. Brown, concluded such lifting activities could have resulted in a tear of the medial meniscus.

The claimant's credibility is paramount in determining the causation for her left knee problems. She described an onset of symptoms from lifting and squatting to lift during the functional capacities evaluation. Drs. Murati and Brown concluded the lifting activities during the functional capacities evaluation caused the left knee injury. Dr. Mills concluded that such activity possibly could have aggravated the left knee but it was more likely related to claimant's weight, body habitus, age and was multifactorial.

The Board finds the Administrative Law Judge, in granting claimant preliminary hearing benefits for her left knee, had to conclude that claimant's testimony was truthful. Although the Board finds some of the claimant's testimony troubling regarding the amount of time she could stand and sit during her shopping activities, the Administrative Law Judge had the opportunity to evaluate all of the witnesses' credibility as the private investigator, physical therapist and claimant all testified in person at the preliminary hearings. In circumstances such as this, the Board finds it is appropriate to give some deference to the Administrative Law Judge's conclusions. Therefore, at this point in the proceedings and giving some deference to the Administrative Law Judge's conclusions, the Board finds claimant proved the lifting activities during her functional capacities evaluation caused her left knee injury.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 2, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2002.

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
 Edward D. Heath, Jr., Attorney for Respondent
 Nelsonna Potts Barnes, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director